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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	:	Marie-Christine ETIENNE	Confirmation No: 2300
Appl. No.	:	09/839,366	
Filed	:	April 23, 2001	
Title	:	HOMEOPATHIC COMPOSITIONS FOR THE TREATMENT OF VIRAL AND METABOLIC DISEASES	
TC/A.U.	:	1617	
Examiner	:	R. Travers	
Docket No.:	:	ETIE3001/REF	
Customer No:	:	23364	

REPLY BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is in response the Examiner's Answer of August 26, 2004, in connection with the above identified application. This reply is timely filed.

Appellant would like to clarify several points raised in the Examiner' Answer as follows.

The Grouping of the Claims

Appellant most respectfully states that contrary to the assertion in Item (7) grouping of claims on page 2 of the Examiner's Answer, Appellant's Brief on page 5 specifically states that the claims as grouped in the Final Rejection do not stand or fall together meeting this requirement for a brief on appeal.

In addition, Appellant's argument with respect to the rejection of claims 1-22 under 35 U.S.C. 101 contain specific arguments with respect to specifically identified claims and points to claims 2, 4, 20 and also claim 12 with appropriate arguments.

These specifically identified claims should not be considered as grouped with the remaining claims rejected under 35 USC 101. This is also true for the rejection of claims 1-22 under 35 U.S.C. 103. Clearly, Appellant has clearly complied with the requirements of 37 CFR 1.192(c)(7) and all of the claims as grouped in the Final Rejection should not be considered together.

The rejection under 35 U.S.C. 101

In the Examiner's Answer it is urged that Applicant has supplied only anecdotal evidence supporting the therapy herein claimed. The anecdotal evidence referred to as that set forth in Applicant's specification. Certainly, one of ordinary skill in the art would view a randomized, double blind-placebo-controlled clinical trial more convincing than anecdotal accounts related by Applicant. Appellant agrees but has not yet been able to conduct the requested tests and moreover, submits that such a test, in view of the evidence of record, is unnecessary.

Applicant notes the assertion on page 9 of the Examiner's Answer that Appellant's European application was published on December 29, 1997 as not being germane to the instant rejection. The Examiner states that, first, the grant was published under a statutory system very different from those statutes at issue. Second, a patent is property, not legal precedent as constructively averred by Appellant. The issuance of a European patent publication is not said to be an insurance of the claimed invention validity.

However, Appellant did not argue in the brief that the corresponding European patent application as published but in fact issued as a European patent which must be novel, have inventive step and industrial utility. Thus, Appellant was not arguing with respect to a published application but with respect to an issued patent.

On page 12 of the Examiner's Answer, second full paragraph, it is stated that Appellant's rebuttal arguments with respect to Tetau are unconvincing. A simple perusal of Tetau (page 1, paragraphs 1 and 3) respectively teach anti-viral homeopathic therapies employing divalent metal ions. Thus, the prior art has established the utility of the presently claimed invention which is however, clearly patentable over the prior art of record.

In view of the above arguments, and those submitted in the Appeal Brief, the rejection of the claims on Appeal should not be sustained. The Final Rejection should be reversed and the application passed to issue.

Respectfully submitted,

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